

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION (L) NO.2274 OF 2006

M/s.Nirlon Ltd. Petitioner
v/s.
Union of India & ors. Respondents

Mr.M.H. Patil for petitioner.
Mr.A.S.Rao with Ms.Ritu Singh for respondents.

**CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.**

DATED : 6th October 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith.
Respondents have filed a reply. Counsel have made
their submissions.

3. The petitioner herein is challenging the
action initiated by respondent Nos.2 to 4 for
recovery of the amount of interest through their
letters dated 24th August 2006, 4th September 2006
and the detention Memo dated 27th September 2006.

4. The brief facts leading to the filing of
this Petition are as follows:-

. The petitioner is a Company having its

factory at Tarapur in District Thane. The petitioner has been paying the excise duty while clearing the goods from time to time as per Rule 173G of the Central Excise Rules, 1944. It, however, so happened that there were a few defaults in the period July to September 2000. The petitioner was required to make defaults good by paying interest at the rate of 24% under sub-clause (1)(d) thereof. According to the petitioner, it has paid the same. Thereafter the Deputy Commissioner, Central Excise, who is respondent No.3 herein, wrote to the petitioner by his letter dated 14th November 2000 that thereafter the petitioner will be disallowed to pay the Central Excise duty on fortnightly basis as it was earlier doing under Rule 173G(i)(a) and that the petitioner will have to pay the duty for each consignment by debiting to the current account or by CENVAT for the period of two months from the date of communication of that order. Accordingly, petitioner preferred to follow the CENVAT method from 16.11.2000 onwards. The respondents subsequently issued a Corrigendum on 19th December 2000 making it clear that the petitioner will have to make payment by debiting to the current account only. It is the case of the petitioner that thereafter it made payment

from the Personal Ledger Account i.e. after 20th December 2000. That was so until the expiry of the period of two months as required and then the petitioner went back to the method permissible under Rule 173G(i)(a) i.e. paying the excise duty on a fortnightly basis.

5. Now, it so happened that much later i.e. on 12th October 2004 the petitioner was served with a notice after an inspection by the audit party that the resort to CENVAT during the period 16.11.2000 to 20.12.2000 was not correct and that the petitioner should pay the interest to the tune of Rs.31,98.398/-. The petitioner replied to the same by its reply dated 20th October 2004 by stating that the petitioner was only following the method which was permissible under the Deputy Commissioner's letter dated 14th November 2000. Nearly two years passed thereafter and now again on 31st August 2006 the demand is raised that this interest amount should be paid and now a detention Memo is issued on 21st September 2006 not to clear the goods of the petitioner for non-payment of the interest amount.

6. The case of the petitioner is that it followed the method permitted by the Deputy

Commissioner and it should not be made to suffer. In any case, the petitioner should be afforded a hearing and for that purpose, reliance is placed on the judgment of the Apex Court in **Union of India & ors. vs. Madhumilan Syntex Pvt.Ltd. reported in 1988 (35) E.L.T. 349 (S.C.)** to the effect that the demand raised without notice or hearing would be invalid.

7. Reliance is also placed on a judgment of another Division Bench of this Court in **Lloyds Steel Industries Ltd. vs. Union of India reported in 2005 (183) E.L.T. 351 (Bom.)** where the Revenue did not dispute that the liability to pay duty can be discharged either by debiting the current account or by utilizing CENVAT credit. This is recorded in para-6 of this judgment.

8. Mr.Rao appearing for the respondents, however, contends that this judgment is not explaining Rule 173G of the Central Excise Rules, 1999. That apart, he states that although the letter of the Deputy Commissioner dated 14.11.2000 did state that the petitioner may pay the excise duty by debit to the current account / CENVAT, the reference to CENVAT was erroneous and that was impermissible. He relied on sub-clause 1(e) of

Rule 173G which provides as follows:-

" (e) If the manufacturer defaults on account of any of the following reasons, namely:-

(i) full payment of any one instalment is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or

(ii) the due date on which full payment of instalments are to be made is violated for the third time in a financial year, whether in succession or otherwise,

then the manufacturer shall forfeit the facility to pay the dues in instalments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in clause (b) and in the event of any such failure it will be

deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow."

9. We have noted the submissions with respect to the merits of the demand and the defence of the petitioner. The fact however remains that principles of natural justice require that the petitioner ought to be issued a Show Cause Notice as to why the interest amount should not be claimed from it and after affording a hearing that liability ought to be decided. That has not been done which is clearly contrary to the judgment of the Apex Court in *Madhumilan Syntex* (supra). That was particularly necessary in the fact of the present case where the petitioner has chosen to follow one of the options given by the Revenue and the demand for interest was being raised after a good number of years. As far as that aspect is concerned, in our view, the submissions of Mr. Patil deserve to be accepted. The petitioner was entitled to at-least show cause for which he had to be given an opportunity.

10. For this limited reason, we interfere with the demand Notices dated 24th August 2006 and 4th

September 2006 and quash and set aside the detention Memo dated 21st September 2006. Consequently, the goods will be released. The respondents may issue a show cause notice to the petitioner as to why the interest as claimed should not be recovered and then after affording a hearing and considering the defence, pass appropriate orders.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)